

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 23-10063-shl

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5 In the Matter of:

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7 GENESIS GLOBAL HOLDCO, LLC,

8

9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 One Bowling Green

13 New York, NY 10004

14

15 October 6, 2023

16 10:09 AM

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21 B E F O R E :

22 HON SEAN H. LANE

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: ALIANNA PERSAUD

1 HEARING re Doc. #779 Notice of Agenda

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3 HEARING re Doc. #711 Motion for Entry of an Order Pursuant
4 to Bankruptcy Rule 2004 Authorizing the Issuance of
5 Subpoenas for the Production of Documents by the Debtors

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25 Transcribed by: Sonya Ledanski Hyde

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P R O C E E D I N G S

THE COURT: Good morning. This is Judge Sean Lane in the United States Bankruptcy Court for the Southern District of New York, and we're here for a 10:00 in Genesis Global Hold Co., LLC., a Chapter 11 case. So we'll start with appearances. Let me find out who's here for the Debtors. Oh, I'm not on. All right. Good morning. This is Judge Sean Lane in the United States Bankruptcy Court for the Southern District of New York, and we're here for a 10:00 hearing in Genesis Global Hold Co., LLC. So let me find out who is here from various parties starting with the Debtors.

MR. BAREFOOT: Good morning, Your Honor. Luke Barefoot from Cleary Gottlieb for Genesis the Debtors.

THE COURT: Good morning. And on behalf of the Official Committee?

MR. WEST: Good morning, Your Honor. Colin West of White and Case on behalf of the Official Committee of Unsecured Creditors.

THE COURT: All right. And on behalf of Three Arrows Capital?

MR. MOHEBBI: Good morning, Your Honor. You have Nima Mohebbi from Latham and Watkins along with my partner Adam Goldberg.

THE COURT: Good morning. And I -- this is always

1 the case in matters like this. We have many pages of
2 appearances, but I'm not quite sure who actually intends to
3 appear beyond the folks identified thus far. So rather than
4 go through that lengthy list, I'll just throw it open, find
5 out if there's anyone else who wishes to make an appearance
6 here this morning. All right. In light of the fact that no
7 one else has stepped forward, we can proceed. I do have the
8 agenda for today's hearing. That's filed at Docket 779.

9 And I did receive communication from my courtroom
10 deputy that the discovery conference that was requested is
11 no longer necessary because the parties have worked out
12 their issues. I appreciate that fact that the parties
13 obviously spent some time to work through issues. Thank you
14 very much. And so I think the only thing that is left is
15 the Rule 2004 Motion, which also, based on the reply,
16 appears to have sort of been reduced to a single issue.

17 I will say I have one issue to add to the list,
18 and it's sort of a scheduling procedure issue. And so let
19 me get that out of the way. We had talked about -- and I
20 think perhaps it was at my behest or not, but about how to
21 deal with the Three Arrows consolidation motion and when to
22 hear it and how to work out all the schedules associated
23 with that. And after seeing that motion filed in many other
24 cases, I ran into Judge Glenn and we started talking about
25 whether for purposes of here in the Southern District for

1 convenience and for efficiency's sake, but without it being
2 any comment on the merits or demerits of the consolidation
3 motion itself, whether it made sense for Judge Glenn and I
4 to have a joint hearing just to discuss the matters.
5 Because I certainly suspect all parties would be attending
6 all these different hearings.

7 And he had some time, and I have some time on the
8 23rd at 3:00 if we wanted to break out that one motion from
9 the calendar that's on the next day here. I didn't want to
10 do that without talking to folks because it's not intended
11 to send any profound message about my view about the merits
12 of the motion or anything of that sort. And I know that
13 without communicating with the parties, sometimes doing
14 things like that people will try to read the tea leaves.
15 And here, there are no tea leaves really to read other than
16 at the administrative convenience of the court.

17 So let me ask. I'll start with Three Arrows
18 Capital since it's its motion whether it has a view or not
19 on that as a -- just as a procedural matter.

20 MR. GOLDBERG: Good morning, Your Honor. Adam
21 Goldberg of Latham and Watkins for Three Arrows Capital for
22 the record. We would be happy to reschedule the hearing for
23 the 23rd at 3 p.m. I think that just for the sake of
24 completeness would entail what we've referred to as the
25 coordination motion together with our motion for relief from

1 stay and the related motion to seal.

2 THE COURT: I don't know. That's -- that is a
3 question of whether it would include the relief from stay
4 motion really because relief from stay is dealing with the
5 merits of each case and while there's overlap. So we might
6 think about whether that -- is there a motion for relief
7 from the automatic stay in the other cases?

8 MR. GOLDBERG: Well, Your Honor, Judge Glenn had
9 our Chapter 15 case. He also has the Celsius case.

10 THE COURT: Yeah. No, I guess I'd be referring to
11 the Celsius case, whether there's a motion for stay relief
12 in that case.

13 MR. GOLDBERG: Yes, Your Honor. So we will be --
14 I think we're amending the request to the Court as it
15 relates to Celsius. I'd like to be clear that Latham and
16 Watkins does not represent Three Arrows Capital on any
17 matter related to Celsius. Our co-counsel at Holland and
18 Knight is advising the (indiscernible) and Three Arrows
19 Capital on those issues. We have not -- the -- I should --
20 just for the sake of facts, I would say that a companion
21 coordination motion has not been filed in the Celsius case.

22 There has been a motion for relief from stay filed
23 in the Celsius case, which is on a somewhat different basis
24 than the one presented --

25 THE COURT: Yeah. So --

1 MR. GOLDBERG: -- in this court.

2 THE COURT: So yeah. I guess I had assumed there
3 was a motion -- a coordination motion filed in Celsius. So
4 you're saying the only coordination motion that Judge Glenn
5 has is in the Chapter 15 case?

6 MR. GOLDBERG: That's right.

7 THE COURT: And the only stay relief motion he has
8 is in the Celsius case, but it's done by different counsel
9 on different grounds.

10 MR. GOLDBERG: That's right, Your Honor.

11 THE COURT: All right. That does raise the
12 question of whether it is appropriate to have a joint
13 hearing because I don't know that I -- the question of
14 overlap, the Chapter 15 -- I assumed there was a Chapter 11
15 -- a similar Chapter 11 motion for coordination that Judge
16 Glenn had. Well, anyhow, I can't sort of figure out those
17 puzzle pieces at the moment, but I appreciate the factual
18 clarification.

19 MR. GOLDBERG: Thank you, Your Honor. And I think
20 you're not off base. We I think had originally anticipated
21 seeking to coordinate Celsius as well, and I think as we've
22 refined and evaluated those issues it will be clear that in
23 our proposed order related to the coordination motion, we
24 would not be seeking to include the Celsius case in that
25 coordination.

1 THE COURT: All right. All right. So let me hear
2 from the Debtors.

3 MR. BAREFOOT: Good morning, Your Honor. Luke
4 Barefoot from Cleary Gottlieb for the Debtors. I think you
5 covered much of what I wanted to say in terms of, look, if
6 you wanted to have a joint hearing just with Judge Glenn in
7 respect of his oversight of the Chapter 15 proceedings, I
8 think that we would certainly understand the reasons for
9 that. I think for many of the reasons Mr. Goldberg just
10 laid out, I think Celsius really is a different animal both
11 in terms of, you know, the -- that they're not in
12 coordination (indiscernible).

13 THE COURT: Yeah. I think -- I think when I heard
14 the preview, I had assumed that there was going to be one
15 and that they were sort of going to -- obviously, each case
16 has -- would have its own wrinkles. But it sounds like
17 there's not that level of parallel action here. And so it
18 really would just be if there was a joint hearing then on --
19 it doesn't make any sense to talk about the stay relief
20 motions at that hearing. It would just really be to talk
21 about coordination, the motion that's been filed in the 15
22 case and here, although they are different by virtue of the
23 fact that one's a 15 and one's a 1011.

24 MR. MOHEBBI: Your Honor, just so (indiscernible),
25 and I think you covered this largely whenever we originally

1 talked about moving the date for the hearing on the listing
2 motion, there is very much part and parcel and a lot of
3 overlap between the grounds for the list day motion and the
4 coordination motion not for the reason that it was adjourned
5 so that they could file their coordination motion and have
6 those put together. I'm not sure it makes a lot of sense to
7 segregate those two at this point given that the overlapping
8 issue.

9 THE COURT: All right. All right. Yes. And I
10 apologize for -- the minute we sort of set this up and had a
11 conversation about it, and so to clear the air on it, and
12 then this wrinkle came up about this possibility, which is
13 -- which makes sense to discuss. So -- but it also
14 represents a level of uncertainty. So I'm going to talk to
15 Judge Glenn about it.

16 Again, I think I had thought that there was going
17 to be a coordination motion in Celsius, and I think those
18 would then be by definition similarly -- that would be
19 similarly situated to this motion. And there might be
20 sufficient overlap to make it sensible. I'm not -- given
21 what you just said about the stay relief motion, which
22 doesn't come as a surprise, I'm not quite sure it is
23 efficient or sensible. I don't know that Judge Glenn wants
24 to have to sit through all that.

25 So here's what I'll do. We'll leave everything

1 status quo until I talk to Judge Glenn. If we decide that
2 for purposes of venting issues, essentially, and having a
3 discussion, then it would be helpful to have the hearing as
4 a joint hearing. Then we'll let you know. But again,
5 there's no messaging here in terms of my views on the
6 ultimate merits of any of the requests. It's just a matter
7 of what the discussion looks like really. So Mr. Barefoot,
8 anything else you wanted to share on that subject?

9 MR. BAREFOOT: No, Your Honor.

10 THE COURT: All right.

11 MR. BAREFOOT: We'll wait for (indiscernible) on
12 that.

13 THE COURT: All right. Thank you so much. And I
14 don't know if the Committee wants to be heard on that. They
15 don't have to be, but I didn't want to preclude them from
16 chiming in.

17 MR. WEST: Colin West, Your Honor, from White and
18 Case for the Committee. No, Your Honor. I think you now
19 have all of the relevant background procedural facts, and I
20 don't think we have anything to add.

21 THE COURT: All right. Thank you very much. All
22 right. I appreciate your indulgence in chatting about this,
23 and with that, we can turn to the matters that are on the
24 agenda, which is the Rule 2004 motion. And since it's Three
25 Arrow Capital motion, I thought I would start with them.

1 And I have read all the papers. I have my stickies, I have
2 my Rules of Civil Procedure that are incorporated in the
3 Rules of Bankruptcy Procedure for thinking about how to sort
4 these things out.

5 And I will start with this question. So there's a
6 discussion in the reply talking about the -- essentially as
7 frankly the one issue that's left, which is the request for
8 all documents and communications from the June 14, 2022
9 through July 31, 2022 concerning the assignment of certain
10 claims from Genesis to DCG as set forth in the assignment
11 assumption of master loan agreement executed July 14, 2022.
12 That seems to be the only issue left.

13 I guess I was trying to figure out in light of the
14 fact that there has been some production of information and
15 some coordination, no pun intended, among the parties to try
16 to remove issues, I'm trying to figure out, and I'll ask
17 Three Arrows Capital this, am I looking at this still from
18 the point of view at 2004, or am I really looking at it from
19 the point of view of discovery in a contested matter, right?

20 So the motion said 2004. The response said no,
21 it's not 2004, it's -- we've already moved onto a contested
22 matter under the rules, and that's the way we look at it.
23 And in fact, there is a discussion in the reply then about
24 relation back and all those kinds of questions. And so I
25 ask because there's a different standard in Rule 2004 than

1 there is in a contested matter.

2 I don't know that that -- differing standards
3 would be dispositive here, but I at least, as a judge, want
4 to know what the rules of the road are. When I open my rule
5 book, what page should I be opening to when I consider the
6 last item that's on the agenda here? And I guess it also
7 was a question that occurred to me given that there was some
8 production, additional production, and what the parties
9 thought they were doing or not doing.

10 Now, I don't want to overthink it. Parties may be
11 saying, Judge, however you think about it, we just didn't
12 want to fight about certain issues, so we just produced
13 documents. If that's the answer, that's fine. But from
14 Three Arrows Capital -- from the view of Three Arrows
15 Capital having seen the objection and having gotten
16 additional documents, is this a 2004 question still, or is
17 this really a contested matter and we're looking at the rule
18 incorporated, you know, Rule 26?

19 MR. MOHEBBI: It's a 2004 matter, Your Honor. And
20 it is absolutely true that the parties worked through
21 several issues in response, and we appreciate the Debtors'
22 work in that respect. But we do think this is a 2004 issue
23 because it relates to a claim that has not been asserted
24 yet. And --

25 THE COURT: Well, but here -- so -- all right. So

1 -- but then it raises the following question. You're saying
2 it's unrelated for purposes of analyzing it as a 2004 versus
3 a contested matter, but then you say it will relate back,
4 which seems to say it has to be related to a pending claim.
5 So I'm not -- how are you threading that particular
6 intellectual needle?

7 MR. MOHEBBI: Well, there's two points here, Your
8 Honor. The first is the question of whether -- the only
9 reason we discussed relating back is because the Debtors in
10 response don't disagree that we meet the standard of 2004.
11 We say -- they say the claims are time-barred. Now, if you
12 look at the standard, what we're saying is that even if --
13 first of all, Your Honor doesn't have to address that
14 question right now.

15 There's a lot of cases, including the In re
16 Millenium Labs case, that talks about the court not having
17 to "speculate" over the merits of the causes of action, or
18 whether or not there's even subject matter jurisdiction or
19 anything. The question is only whether or not in the
20 context of the specific motion the Court has the power to
21 evaluate.

22 Now, on the relation back question, it's not that
23 the claims are not -- in order to relate back, they have to
24 rise from the common -- or the same common core facts.

25 THE COURT: Well, they have the standard.

1 MR. MOHEBBI: Now --

2 THE COURT: We all understand the standard, but I
3 guess my thought is they're saying there's no point here
4 because these claims can't be asserted, and you're saying
5 they can be asserted because they would relate back. But if
6 they relate back to what's in the current operative claim,
7 then they're part of the contested matter, aren't they? I
8 mean, if they're that close, how is it that they're entirely
9 unrelated?

10 I don't know how you can make those two -- I
11 understand how you got there in terms of the different
12 issues and challenges, but I'm just trying to figure out how
13 to reconcile that, that they're both simultaneously entirely
14 unrelated so 2004 is still okay notwithstanding the pending
15 claims in the contested matter. But then once we get past
16 that, if there's an issue about whether they can be
17 asserted, you've told me and the rest of the world that,
18 well, then they will be related. And so how can they be
19 entirely unrelated now?

20 MR. MOHEBBI: Well, because we're talking about
21 two different standards. It's not the -- again, we're
22 talking about --

23 THE COURT: But they both use the word related.
24 They use related, and then they put an "un" in front of it
25 --

1 MR. MOHEBBI: Understand. Well, relate --

2 THE COURT: -- and say unrelated.

3 MR. MOHEBBI: Relate back. Relate back. In other
4 words, same commonality of facts, not necessarily the same
5 claim. We're talking about a potential fraud claim
6 (indiscernible).

7 THE COURT: No, it doesn't have to be the same
8 claim. But the idea is, right, we've all seen cases, folks
9 who are litigators say, well, you know, there's discovery
10 and I'm going to amend my complaint because what I've
11 learned in discovery is just some additional facts in the
12 scope of what I'm arguing is tweaked, whether I've got
13 something -- the same facts and some additional facts that
14 open up some additional legal avenues, or maybe greater
15 damages, or whatever it is.

16 But they're sort of rooted together, and I'm just
17 -- so that's sort of how you look at that because I'm
18 dumbing it down. But it -- for Rule 2004, it has -- to --
19 and the Debtors have argued this. It can't be Rule 2004.
20 Now, again, I don't want to get hung up on it because maybe
21 your argument is it is potentially related. Maybe we should
22 do it under Rule 26, and then we should have that
23 discussion. But I am -- I'll stop talking now and I'll let
24 you talk. I am struggling with that. It does seem to be
25 sort of two sides of the same coin. It's not exactly the

1 same legal test, but they'll sort of run into each other at
2 some point intellectually. And that seems to be a collision
3 course that they're on at the moment.

4 MR. MOHEBBI: Sure, Your Honor. I mean, look, I
5 think stepping back for a second, I wanted to take these two
6 points in order. We are Debtor too. This relates to a
7 massive claim we have. I think it would help me to explain
8 a little bit exactly what the fraudulent transfer theory
9 means here and where you can see that sort of Venn diagram
10 that you're alluding to. What we're talking about here is
11 in -- out of all of the claims that we've asserted against
12 Genesis in this matter are of the way of preference and turn
13 over.

14 Instances where Genesis in the lead-up to the
15 Three Arrows, our Debtor's liquidation, foreclosed on
16 certain assets that we claimed, hundreds of millions of
17 assets that we claim that they shouldn't have foreclosed on.
18 Now, between that small period, that two-week period or
19 three-week period, whatever it is, that we're asking for
20 documents, we filed for liquidation. And you know, two
21 weeks after we filed for liquidation, Genesis assigns all of
22 its linear relationship to DCG, and now they don't want to
23 provide documents about these issues.

24 Now what our suspicion is here is that Genesis
25 first foreclosed on those assets only then to assign to DCG

1 in order to eliminate mutuality and prevent us from setoff
2 rights in the BBI. Basically, assigned away turn over --
3 this is a -- we couldn't essentially set off against them in
4 the BBI. Now, the claims are related only in the sense that
5 we're talking about the same linear relationship that was
6 transferred. However, the theory here is that DCG and
7 Genesis did this precisely to get a significant advantage
8 vis-a-vis other Creditors.

9 And otherwise there would be -- I mean, the fact
10 that they're refusing to provide communication surrounding
11 that window, they're essentially frustrating hundreds of
12 millions of dollars in recovery, not even letting us see the
13 intent.

14 THE COURT: Well, I -- again --

15 MR. MOHEBBI: So...

16 THE COURT: You know, whenever you have questions
17 about whether you can assert certain claims, you know, it is
18 what it is. So I still have to run the drill. So --

19 MR. MOHEBBI: Sure.

20 THE COURT: -- in your view under those factual
21 circumstances, it can both be unrelated so as to allow you
22 to do this by 2004 but potentially related for purposes of
23 relation back?

24 MR. MOHEBBI: That's exactly correct, Your Honor.
25 And I think that the cases that we've cited state that --

1 I'll also note one more thing.

2 THE COURT: So what would be your best case on
3 that? Because again, I understand the concepts are
4 different, but it is -- they do use the same word, related
5 and then unrelated. And so I'd be curious if there's -- I
6 haven't gotten a chance to look. I've read your papers
7 several times, but I haven't gotten a chance to look at
8 specific cases. So I'd be interested if there is a case
9 that talks about the, pun intended, relationship between the
10 being unrelated and being related. Because it's not -- it's
11 a bit of a slippery concept.

12 MR. MOHEBBI: Correct.

13 THE COURT: And so any particular case that you
14 would have me read?

15 MR. MOHEBBI: Sure. I actually think it would be
16 helpful to read both Debtors' cases and the standard case,
17 but we're happy to submit additional briefing. I would just
18 point you to the --

19 THE COURT: No, no, I don't want additional
20 briefing. I guess we all know everybody cites cases. We
21 often cite a lot of cases, but we also know that often there
22 is a case or two that is particularly salient to a
23 particular issue. So that's really what I'm asking you is
24 --

25 MR. MOHEBBI: Sure.

1 THE COURT: -- of the cases cited in your briefs,
2 the motion or the reply, is there a particular one that you
3 think addresses the intersection between relation back for
4 purposes of amendment and something being unrelated for
5 purposes of Rule 2004?

6 MR. MOHEBBI: The short answer is, Your Honor,
7 nothing directly on point as to that particular issue. In
8 fact -- but there is the In re Frontier Communications case,
9 which is 641 B.R. 64, does say that -- it lays out that this
10 -- what I think the standard that delineates this issue,
11 which is to determine whether an amendment relates back, a
12 court must decide whether there is a sufficient commonality
13 of facts.

14 And the point being focused on the facts as
15 opposed to the -- and I would also note that Genesis in
16 their cases, they don't cite a single case that deals with
17 Rule 2004. All of their cases dealt with solely this
18 question of amendment. So we're looking into that right
19 now, and we're going to try to get back to you by the end of
20 the hearing if there's a specific case that deals with the
21 intersection.

22 THE COURT: Well, the -- what they cited was the
23 pending proceeding rules, and I have decisions, written
24 decisions on both I think the relation back certainly. And
25 I know I do, and I've certainly issued decisions, I can't

1 remember if they're bench rulings or not, on the pending
2 proceeding rule. And so -- and that the question is, again,
3 they're related. So -- all right.

4 MR. MOHEBBI: And they made that argument only
5 with respect to the Grayscale claims. They did not make the
6 pending proceeding argument with respect to the assignment
7 claims that we have right now.

8 THE COURT: So while they -- so let me ask you a
9 separate question that I don't want to forget. Is --
10 there's a discussion in the Debtor's objection talking about
11 -- and also in your papers talking about the reservation of
12 rights language. And I'm trying to figure out how much
13 water you're seeking to have that particular reservation of
14 rights language carry in this particular context, whether it
15 actually is going to be the thing you cite to for purposes
16 of relation back, or it's just a fact and it's, you know, in
17 your view, a good fact so you want me to know it. So I --
18 and the -- so any view that you have on that would be
19 helpful.

20 MR. MOHEBBI: Sure, Your Honor. Thank you. You
21 know, I think the relation back -- or the reservation of
22 rights language I think was -- has to viewed in the context
23 of the situation that the liquidators are in. I think
24 first, the liquidators began this liquidation with a
25 monumental task. As in every sort of large Debtor case,

1 Your Honor, the Debtors had -- or the JLs had numerous
2 issues that had to be dealt with, you know, with no
3 cooperation from the founders talking about (indiscernible)
4 --

5 THE COURT: Now, I understand you're in a
6 challenging factual situation. But I guess the question is
7 does the fact that that language exist change the calculus
8 at all for what I have to look at.

9 MR. MOHEBBI: I think it does because we've
10 reserved rights and we, you know, mentioned the assignment.
11 This all goes to their -- the question of undue prejudice.
12 And so they knew we were actively investigating. We
13 complied with their claims objection or the claims deadlines
14 that they set in their initial plans.

15 And they cited -- I mean, they attached the
16 amendment to their own objection. So our view is that there
17 is really no prejudice for, you know, just allowing us to
18 investigate what could be a tremendous issue here that
19 relates to the financial condition of the estate. That's
20 rule 2004(b). The financial condition we're allowed as a
21 Debtor to investigate, including under -- in our Chapter 15.
22 We're allowed as a Debtor to investigate claims that go to
23 the financial condition of the estate.

24 And we're only talking about a very small period
25 here. Talking about three weeks of communications, which

1 again, very surprising that --

2 THE COURT: Well --

3 MR. MOHEBBI: -- they've agreed to produce
4 (indiscernible). Except for that (indiscernible) --

5 THE COURT: But to back up for a second, you
6 mentioned as a Debtor, you're entitled to do this, that, and
7 the other thing. You're not the Debtor here, so if you have
8 a request as a debtor, those are traditionally made in the
9 debtor's cases, right? And so I understand you're here
10 making a request as a creditor. And so I'm not sure it
11 matters one way or the other, but you're not the Debtor
12 here. And you know, it is what it is.

13 The -- so I assume that your -- well, let me sort
14 of take a different tact here. So you've resolved the other
15 issues dealing with Grayscale, so now there's just this
16 other matter dealing with the -- that particular assignment.
17 So the way you see it, you don't have anything in your
18 current claim that covers that. But you think it's sort of
19 factually related that you previewed because it's sort of
20 about the parties' relationship.

21 MR. MOHEBBI: Exactly.

22 THE COURT: All right. So to loop back to the
23 other issue, I guess my question is a matter of policy. I'm
24 -- there's a bit of a challenge to allowing a reservation of
25 rights language to open a door wider than it would otherwise

1 in these circumstances because, frankly, if that's the case
2 laws, everybody will add a reservation of rights language,
3 and it doesn't -- it really won't mean anything. So I don't
4 know for relation back that it's going to really make any --
5 I understand it may affect -- so the -- I'm having trouble
6 understanding how that can actually open the window broader
7 than it would be otherwise.

8 MR. MOHEBBI: Sure.

9 THE COURT: I think the equities are the equities
10 in the sense of the case you walked into and circumstances.
11 But I'm just -- the reservation of rights seems to be more
12 of a pro forma thing. And if it has that kind of weight,
13 then everybody will use it, and then it'll really have no
14 meaning at all. And so I'm just not sure. But is there
15 anything else you want to cite to me or point out on that
16 issue?

17 MR. MOHEBBI: Sure, Your Honor. Just two more
18 things. I think, you know, you mentioned that looking at
19 the reservation of rights language, I think a lot of these
20 questions are really not before you. I mean, I think
21 fundamentally just to take things back, this is a question
22 about whether or not we should get Rule 2004 discovery. I
23 think very fundamentally the standard is met.

24 The In re Millenium Lab Holdings case -- and I
25 will just make a quote from this case, "As many -- as

1 numerous courts have recognized when presented with a 2004
2 motion, there is no way to determine where the
3 investigations will lead, what claims may be revealed, and
4 what issues are core or non-core. Thus, in order to grant a
5 Rule 2004 motion, a court need not speculate over causes of
6 action that may be pursued." The reality is --

7 THE COURT: No, I understand that, but the --

8 MR. MOHEBBI: -- beyond (indiscernible) --

9 THE COURT: If you just look at Rule 2004 in
10 isolation with -- say there's no claims, there's nothing,
11 it's a timely filed Rule 2004, we're wondering about claims
12 and liabilities and it's -- and it comes early on in the
13 case, nothing else has happened, I agree. And that's sort
14 of what that language does.

15 The problem is it's been implicated -- more than
16 that has been implicated here because the idea is, well, so
17 if you look at Rule 26, which is incorporated to contested
18 matters, for example, you know, there's a discussion about
19 whether the burdens outweigh the likely benefit.

20 And the Debtors have said, well, there's no
21 benefit at all. It's time barred. And so -- and your
22 response to that is, well, it really wouldn't be because
23 it's -- it would be something we could relate back.

24 MR. MOHEBBI: That's right.

25 THE COURT: And then that sort of raises, you

1 know, the question about is it -- is that really then 2004.
2 So it's a bit of an unusual factual circumstance here, and I
3 haven't seen a circumstance where I've had that tension. So
4 I agree with you. We all know what the standard is for Rule
5 2004. And if this were a simple isolated one issue kind of
6 Rule 2004 request, I don't think we'd be here today. But
7 it's not.

8 So you've answered a lot of questions, and I
9 really appreciate your nimbly jumping from one issue to
10 another. And so I did want to give you a chance to address
11 anything else you wanted to address before I hear from the
12 other side.

13 MR. MOHEBBI: Sure, Your Honor. Just the one last
14 thing I would note here is just considering the equities
15 here, I think you mentioned that, and I think that that is,
16 stepping back, an important consideration here. And I would
17 just ask that the Court do that. And in particular, if the
18 Court were to determine our standing here as a Creditor, I
19 would ask that any sort of decision be without prejudice for
20 us to be able to seek this same discovery in our Chapter 15.

21 The reason we seek -- we're seeking it here is
22 because Mr. -- or the other Debtors have basically insisted
23 on us being at -- handling all these discovery disputes in
24 this case. This relates to a tremendously potentially
25 valuable claim that we have against the Debtors. It's a

1 minor burden on them. We're talking two weeks of it -- of
2 communications. This is not something that we think is
3 going to dramatically change things.

4 And they can make the same arguments as to whether
5 or not this is time barred if we find communications that
6 give us additional claims and assert them in an amended
7 proof of claim. They're perfectly able to do that, you
8 know, move to dismiss, file a motion for summary judgment,
9 and defend those claims. There's no prejudice. And so we
10 just would ask that the Court consider those factors in
11 making a decision here.

12 THE COURT: All right. So let me just make sure I
13 understand the timeframe. You keep saying two weeks. I
14 think it's June 14th through July 31st. So I think it's
15 about --

16 MR. MOHEBBI: Oh, right.

17 THE COURT: -- a month and a half. So not to be
18 too persnickety, but I understand the agreement was executed
19 July 14th. Why does it make sense to ask for things beyond
20 that date? If the agreement has already been signed,
21 sealed, and delivered, wouldn't it be appropriate to have it
22 up through that date? Because if people have views about
23 something that's already happened, I suppose -- but you
24 know, and that would make it a month as opposed to six
25 weeks.

1 MR. MOHEBBI: That's -- I mean, I think that would
2 be a reasonable middle ground approach, Your Honor. And I
3 think -- but you know, I -- we do think the communications
4 after would potentially be relevant because it would go to
5 the intent of the assignment. But if Your Honor's inclined
6 to narrow it, we will take (indiscernible) on that front
7 because we do think it's important.

8 THE COURT: All right. All right, counsel.
9 Anything else to -- that we should discuss before I hear
10 from the other side?

11 MR. MOHEBBI: No, Your Honor.

12 THE COURT: All right. Thank you very much. All
13 right. Let me hear from the Debtors.

14 MR. BAREFOOT: Good morning, Your Honor.
15 (Indiscernible) Cleary Gottlieb for the Debtors.

16 THE COURT: Oh, Mr. Barefoot, you're breaking up a
17 little bit.

18 MR. BAREFOOT: Can you hear me now?

19 THE COURT: Yeah, that's better. So it might be a
20 microphone issue more than an internet connectivity.

21 MR. BAREFOOT: Okay. I'll try to lean as close to
22 the computer as I can. Your Honor, there are two points
23 that Mr. Mohebbi and I are in (indiscernible) agreement on,
24 and I think those two points are determinative. One is that
25 these requests relate to a claim that has not yet been

1 asserted, and that the only available mechanism for
2 discovery here is Rule 2004 for that reason.

3 These claims -- it makes very little sense from an
4 estate resources perspective to require the estate to
5 collect documents, produce documents, have (indiscernible)
6 all in service an assertion of a claim that was not timely
7 asserted and can't be asserted. In terms of the
8 distinctions, it's very helpful and important to look at the
9 difference between -- in terms of the way the proof of claim
10 pled the allegations starting Grayscale that we've now
11 resolved through agreements to make an additional
12 production.

13 Specifically, they didn't understand completely
14 and frame them as potential claims relating to Grayscale.
15 But they put the estate on notice they had potential claims,
16 and were intending to potentially assert claims relating to
17 Grayscale. They never did that whatsoever concerning
18 transactions between the Debtors and DCG. The proof of
19 claim is replete with references to an explanation how it
20 challenges transaction between and transfers between Three
21 Arrows and the Debtors.

22 No where does it put the estate on notice or
23 indicate that it was intending to or reserving the right to
24 challenge transactions between the Debtors and DCG. And
25 that's a very important distinction both because it's an

1 entirely different party, and it's temporally distinct. It
2 happened, you know, a month after Three Arrows defaulted and
3 the Debtors foreclosed.

4 Your Honor, I don't see that there is any room or
5 breathing space between saying these claims were not -- do
6 not relate to the existing contested matter, and they don't
7 because they weren't asserted. but yet, nonetheless,
8 asserting that these claims can somehow relate back. And to
9 the extent that that is not -- it is hanging its hat on a
10 generic reservation of rights, that's obviously not
11 sufficient.

12 And the estate, the Three Arrows estate, knew how
13 the potential claims that it might not yet have all the
14 facts on. Maybe the potential claims, to the extent that
15 they ever commenced a Chapter 11 case in order for this
16 exact reason, to put everyone on notice that they may intend
17 in the future to assert those claims. They never did --

18 THE COURT: So let me make sure I understand. So
19 in terms of the different ways that you look at it, the
20 objection -- and people's positions have shifted. And so
21 the objection says we have objections to their claims, and
22 you can't use 2004 because it's covered by a pending
23 proceeding. And so -- but what I'm hearing now is,
24 essentially in your view, they've said it isn't under Rule
25 2004. And okay, it's not. And that -- and so there seems

1 to be sort of a slight maturation or progression of views on
2 that.

3 So maybe you can give me wholistically what in
4 your objection you sort of still adhere to and what you
5 don't. Because clearly, the objection says there is a
6 pending matter, you don't get 2004. And then we get into
7 Rule 26 and whether the claim is, you know, timely or not.
8 But what's your thinking on that?

9 MR. BAREFOOT: Your Honor, the distinction here
10 is, and I think Mr. Mohebbi alluded to this, when we filed
11 out objection, we were still fighting about both the
12 Grayscale claims, which are in their proof of claim, and
13 about this final claim relating to unasserted claims
14 concerning the assumption and assignment agreement between
15 the Debtors and DCG. So we 100 percent would stand by the
16 position that the Grayscale claims are a contested matter.
17 They are the subject of our pending amended claims
18 objection, and therefore, you can't get Rule 2004 with
19 those.

20 THE COURT: All right.

21 MR. BAREFOOT: I think we're all in agreement that
22 that's not the case for the assumption (indiscernible)
23 because there were no claims made in the proof of claim in
24 determining the assumptions.

25 THE COURT: All right. Thank you. That's helpful

1 to have on the record for purposes of making it clear what
2 we're doing and what we're not doing. All right. So it
3 does seem then everyone agrees this is appropriate for Rule
4 2004 because it's not related. And where you part company
5 is that from their point of view, let's leave for another
6 day what to do with the potential claim. And from your
7 point of view, there's no point in doing that because it's
8 something that is unrelated. It is by definition
9 problematic from a relation back point of view.

10 MR. BAREFOOT: And I think, Your Honor, that goes
11 to the cause (indiscernible). You know, while, as Mr.
12 Mohebbi has said in many contexts courts might say, you
13 know, I don't need to specify at this point what the
14 contours of this claim (indiscernible), etcetera. We are in
15 a different factual scenario here where the bar date has
16 passed and claims were even amended after that, and these
17 claims were simply never asserted. So to state that there's
18 cause for what is effectively going to be an exercise in
19 futility would really only be a poor use of estate
20 resources.

21 THE COURT: So two questions. I just want to make
22 it clear from the record what you think Three Arrows Capital
23 should've done here under its circumstances, right? Because
24 certainly there's an undercurrent of we're doing the best
25 with what we have under the circumstances, and therefore the

1 equities lie with us. I'm not sure where the equities get
2 siloed in my analysis here. I suppose the -- it's a preview
3 into the relation back second prong. But what is your view
4 in terms of considering those equities in sort of fairness
5 generally. And just getting and understanding, what do you
6 think should've happened if you were in their shoes?

7 MR. BAREFOOT: Your Honor, I understand that they
8 may not have all the facts that they would like to have.
9 They assert that -- to support a potential fraudulent
10 conveyance claim to challenge a transaction that occurred in
11 July between the Debtors and DCG. There are many other
12 categories of claims, including their (indiscernible) claims
13 where they similarly don't have the facts to completely
14 plead any cause of action, but they put the estate on notice
15 that they intended to preserve the ability to assert that
16 claim later and to take discovery on it.

17 They never said boo about the assumption
18 assignment agreement, about any transactions between the
19 Debtors and DCG. The entire other focus of their claims is
20 on transactions between Three Arrows the Debtors. So, yes,
21 they are third parties, and they were appointed now that --
22 15 months ago. But they were appointed a year before the
23 bargaining. But they certainly knew as of that point how to
24 make clear when they intended to reserve their rights to
25 assert a claim on the setbacks in the future. And they

1 simply didn't do that with respect to the assumption and
2 assignment agreement or any other transaction to the
3 Debtors' interest.

4 THE COURT: Well, is there an argument that they
5 wouldn't have known enough to do that? When did the
6 assumption and assignment agreement become known to folks?
7 Again, I'm not -- I don't -- I could see it from this
8 vantage point, not from all of your vantage point in terms
9 of understanding those kind of facts and when things come to
10 light.

11 MR. BAREFOOT: Your Honor, I think you've heard
12 the fact that there were even prior to the bar date a number
13 of discussions between representatives of Three Arrows and
14 representatives of the Debtors. The assumption is
15 (indiscernible) out in the open at that point. In any
16 event, it was in our disclosure statement. It was in our
17 original claims objection. They then amended their claims
18 in response to that, and we still see nothing about claims
19 relating to the assumption of assignment.

20 THE COURT: All right. So a couple of other
21 things to ask you about. One is the timing of this relation
22 back issue. So I understand that you're saying there's no
23 point to this. You certainly -- I get your argument. I
24 have gotten in some ways, I wouldn't even say half a loaf,
25 but three-quarters of a loaf of if I had a motion seeking to

1 amend a complaint or a claim to relate back.

2 I haven't gotten sort of the full -- what a full
3 motion would look like because that would normally say,
4 well, here's the language in our claim, and here's this.
5 And so I have a lot of it, but probably not quite all of it.
6 And that raises the question about timing in terms of my
7 ability to rely on it at this point in time for Rule 2004.

8 So what do I do with that conundrum if that's the
9 argument you want me to rely upon to say there's no point in
10 doing this? It's not a fishing expedition. It's going out
11 in a boat without a rod or a reel. There's nothing that can
12 -- good that can happen from this. So what's your take on
13 that?

14 MR. BAREFOOT: Your Honor, I think you do have
15 what you need in front of you. But to the extent that you
16 would like supplemental briefing, we would be happy to.

17 THE COURT: All right. And I guess the other
18 question I would have is about burden, right? So we're all
19 practical people here, and so I think I've already pushed
20 back a little bit on the timeframe in question of six weeks
21 as opposed to, say, four weeks. And oftentimes people say,
22 well, do your -- so if you think of it as a traditional
23 adversary, you would say, well, do your discovery and then
24 we'll -- people will file their motions and sort it all out.

25 Again, I sort of have kind of a three-quarters

1 view of that at this point. So I'm not sure, and perhaps
2 you can enlighten me as to what the burden is here and how
3 relevant or irrelevant that is to me figuring out what to do
4 going forward.

5 MR. BAREFOOT: Your Honor, I don't have in front
6 of me, you know, statistics to say we've done hit counts,
7 and it's X thousands of documents. Part of the reason for
8 that is that this is temporally distinct from all the other
9 discovery that we've been engaged in. So we would have to
10 do a supplemental pull and collection and then run search
11 terms and hits in order to do this. It is temporally
12 distinct, but we have to (indiscernible).

13 THE COURT: All right. So I guess you're not in a
14 position to say how helpful or not helpful it would be to
15 shrink the time period from six weeks to four weeks.

16 MR. BAREFOOT: I can't give you a numerical
17 parameter around that, Your Honor, but obviously if you're
18 going to order discovery, we would certainly agree with Your
19 Honor to supposition then what could be the relevance of
20 post-execution communications.

21 THE COURT: All right. Mr. Barefoot, thank you
22 for hopping around from various different topics. I
23 appreciate it, and I certainly want to give you a chance to
24 add any other points you would like to before I ask the
25 Committee to chime in.

1 MR. BAREFOOT: Your Honor, the only final point I
2 wanted to make, which is something I should've added when
3 you asked, you know, how well-known was it out there that
4 the assignment agreement existed. DCG is the largest
5 Claimant in the Three Arrows Capital case and sits on the
6 creditors committee by virtue of the assumption
7 (indiscernible). So there really can be no question or
8 suggestion that this existence of this agreement and the
9 relationship between the Debtors DCG that led to it was
10 well-known to the -- to (indiscernible).

11 THE COURT: All right. So I'm assuming that from
12 your point of view there really should've been a 2004
13 request made before the claims bar date seeking this kind of
14 information, and maybe they filed the claim to just get a
15 handle on it, and that that was the way to go.

16 MR. BAREFOOT: Or Your Honor, they could do what
17 they did with respect to the Grayscale claims. At least put
18 a placeholder down so that we can take contested matters in
19 our agreement. But you can't do (indiscernible).

20 THE COURT: All right. All right. Thank you, Mr.
21 Barefoot. Unless you have anything else, I'll hear from the
22 Committee.

23 MR. BAREFOOT: Thank you.

24 MR. WEST: Good morning, Your Honor. Just for the
25 record, Colin West of White and Case for the Official

1 Committee. Given that our objection here is on the basis of
2 preservation of estate resources, I will be brief. You've
3 covered quite a bit with Mr. Mohebbi and Mr. Barefoot. But
4 this is, Your Honor, a waste of estate resources.

5 Fundamentally, there is a 2004 motion for the purpose of
6 collecting discovery relating to claims that Three Arrows
7 admits have not been timely asserted. The -- I think the
8 briefing is before Your Honor about the sufficiency or the
9 extent to which the claims would or would not relate back.

10 We obviously would support the Debtor's arguments
11 that the claims would not relate back. And the only thing I
12 want to add, Your Honor, is as to this discussion that's
13 been had about what do we do with the Rule 2004 standard in
14 isolation. Whatever you might do in a different context,
15 Your Honor, in this case, the specific purpose, according to
16 Mr. Mohebbi, of taking the 2004 discovery is to amend -- is
17 potentially to amend the claims to assert a new claim based
18 on the assignment assumption agreement.

19 In that context, it cannot be the case that you
20 have to put blinders on as to whether the proof of claim
21 could be amended in the first place, right? So it does come
22 down to whether these claims would or would not relate back.
23 It has to as a practical matter. And for the reasons stated
24 in the objection, the claims don't relate back, which again,
25 makes this an exercise in futility from our perspective.

1 We also, Your Honor, can't help but observe that
2 this is another request for relief, another request for
3 discovery. All the while at the same time Three Arrows --
4 not to get off track, but all the while Three Arrows is
5 seeking to have all of these claims heard in an another
6 forum.

7 So stepping back from a global perspective, we
8 think this 2004 motion is reflective of a rather scattershot
9 and wasteful approach to bringing claims and seeking
10 discovery in this court, and we oppose the 2004 motion for
11 the reasons stated in the Debtor's objection and in our
12 (indiscernible).

13 THE COURT: All right. Let me ask you two
14 questions. One is same question I asked Mr. Barefoot about
15 the state of play in terms of the briefing. Because
16 relation back sort of came out nested inside several other
17 frameworks, the 2004 framework, and discovery for a
18 contested matter, and all those discussions, and then we got
19 to that. Is -- one of the things I don't think is good is
20 to make decisions on records that parties might later say,
21 well, we didn't have that motion and the judge didn't have
22 all of the facts. Is there anything you think I'm missing
23 that might be beneficial to lay out?

24 Again, it didn't -- the papers I have, while they
25 address the issue, they don't quite look the way it would

1 look if somebody was filing a motion to amend, and that
2 isn't necessarily dispositive on this question whether
3 there's something missing. But is -- do you have a view
4 about whether any additional briefing on that question would
5 be helpful if that's the issue that this all devolves down
6 to in your view?

7 MR. WEST: So I think, Your Honor, if you look at
8 the Debtor's objection, I think they laid out with a fair
9 amount of specificity why the -- any claims relate -- I
10 think it's a -- theoretically a fraudulent transfer claim
11 arising from the assignment assumption agreement. I think
12 the debtors did lay out why that is really fundamentally
13 distinct from the claims that have been asserted or that
14 were preserved in the proof of claim. I think certainly
15 that could be fleshed out more in supplemental briefing if
16 that's -- you know, if the Court believes that it doesn't
17 have enough information.

18 THE COURT: Well, I guess --

19 MR. WEST: But the --

20 THE COURT: -- since you know it -- since you know
21 the facts better than I do, I guess I'm wondering whether
22 there is more. So there are times when a relation back
23 amendment question delves very much into exactly what a
24 claim or a complaint says, and you end up parsing very
25 finely often specific clauses or sentences. What I'm

1 getting the sense here is that that's not a -- an analysis
2 that's missing because it's not really the way this is laid
3 out.

4 Like from your point of view, there is nothing.
5 There is no specific language to parse other than the
6 reservation of rights on which somebody might hang
7 something. And so again, I'm thinking about what briefing
8 might look like, but it also could very much be that, well,
9 that's not this case. You're not going to get that kind of
10 analysis because that's not the way -- no one's -- and
11 again, you could maybe take the view that no one's presented
12 something to me that suggests that there is briefing to be
13 done on that issue.

14 So again, I'm just trying to throw out some ideas
15 about what, when looking at this, where I was just like,
16 hmm, this is a discussion I'm not seeing. But maybe that
17 discussion is just not one we'd have in this particular set
18 of facts.

19 MR. WEST: I think that's right, Your Honor. I
20 think that the standard for relation back is whether the
21 Debtor was put on sufficient notice such that the amendment
22 would not be an unfair surprise. And we think clearly here,
23 and you know, subject to Three AC's -- you know, any
24 argument Three AC wants to make about why they did put the
25 Debtor on notice of a fraudulent transfer claim in the

1 assignment and assumption agreement, we don't think there's
2 anything there in the proof of claim that would've put
3 anyone on notice that those facts around the assignment and
4 assumption agreement would become an issue for a future
5 claim, or that there would be legally anything like a
6 fraudulent transfer claim.

7 So we don't think there really is anything in the
8 proof of claim that's going to generate a lot of interesting
9 briefing on this issue. But we are certainly happy to brief
10 it should the Court find it necessary.

11 THE COURT: All right.

12 MR. WEST: And I don't -- if the Debtors would
13 like to, I suspect they are as well.

14 THE COURT: Yeah, no, I think --

15 MR. BAREFOOT: Your Honor --

16 THE COURT: -- Mr. Barefoot said that as well. So
17 let me ask you one other question that I didn't ask Mr.
18 Barefoot, but I think I will before I return for sort of the
19 reply from Three Arrows. There was a mention by Three
20 Arrows about, well, if we don't get this information here,
21 don't preclude us in the Chapter 15 from requesting it
22 there. And obviously, the Chapter 15 is not in front of me,
23 and that's not my responsibility.

24 And so what is your reaction to that? And I
25 mention it just in the context of we're having a discussion

1 of efficiency. And so to the extent that you sometimes in
2 litigation have a whack-a-mole problem, if you address
3 something here, it pops up somewhere else. So do you have a
4 view on Three Arrows' comments that way?

5 MR. WEST: So Your Honor, I think -- and I'd want
6 it -- you know, I could in fact, Your Honor, I don't know
7 exactly what is before the Court with respect to that
8 specific issue. In other words, I don't know whether this
9 is a theoretical issue or whether this is an issue that the
10 Court has to decide now as to whether --

11 THE COURT: No, no. I guess I'm not even --

12 MR. WEST: Yeah.

13 THE COURT: Let me be more precise.

14 MR. WEST: I understand.

15 THE COURT: I'm not asking about anything I would
16 do. And I don't think I have it in front of me. I -- it
17 was a comment made, and really, I took it in the following
18 way, which is if you rule in favor of the Debtors and the
19 Committee, the consequence might be that, Judge, we make
20 this application in a different, and that we just want you
21 to be aware of that. And so again, it's not a decision for
22 me to make, but I took it as a comment that someone wanted
23 me to take into account in thinking about the efficiency
24 issues.

25 MR. WEST: So I think my reaction to that, Your

1 Honor, would be if the 2004 discovery is futile because it
2 relates to a claim that has not been timely asserted and
3 would not relate back to the existing proof of claim, I
4 think that's going to be the case regardless. So whether
5 this -- there's going to be a formal ruling here or not, I
6 think as to whether they could seek the discovery in the
7 2004, I think the same rationale would sort of underpin the
8 decisions in both cases.

9 THE COURT: All right. Thank you very much for
10 that. And I'll hear from Mr. Barefoot on that issue if he
11 has anything distinct to say. He might not, and he may be
12 singing from the same sheet of music as Mr. West.

13 MR. BAREFOOT: Your Honor, Luke Barefoot for the
14 Debtors. I agree entirely with Mr. West that the assumption
15 that what we would do if we were faced with that scenario,
16 it does seem particularly inefficient and smells a bit like
17 forum shopping. But I think what Mr. West said makes sense,
18 that if the -- there's no reason why the ruling or the
19 rationale would be different here as opposed to what
20 (indiscernible).

21 THE COURT: All right. Thank you very much. So
22 with that, I'll turn back to Three Arrows Capital for any
23 comments to respond to the discussions we've just had. And
24 maybe we can start with the last -- one of the last
25 questions, which was is there anything missing from your

1 view in the briefing and presentation of the relation back
2 issue. Everybody thinks it's important. There's a lot of
3 briefing. And I -- because this is not a motion to amend,
4 it comes in, in a certain way. And I just want to make sure
5 that nobody feels like their rights have been -- that
6 there's something they would want to otherwise say based on
7 the fact that --

8 MR. MOHEBBI: Well --

9 THE COURT: -- it was raised in the objection in a
10 fulsome way and addressed in the reply in a fulsome way. My
11 suspicion is the answer is no. But again, I don't want
12 anyone to be surprised. So what's your thought on that?

13 MR. MOHEBBI: Your Honor, I mean, the answer is
14 that if -- the question before you as conceded by Mr.
15 Barefoot is this is a 2004 motion. They have not cited a
16 single case where a court has basically decided the merits
17 of the ultimate claim, including that this case, whether
18 it's time barred on a Rule 2004 motion. Not a single case
19 (indiscernible) --

20 THE COURT: No, I understand your legal argument
21 on that, and I will have to think about that argument, and
22 make a decision on that argument. I understand that that's
23 -- that there's case law on Rule 2004 on that front, and
24 that's certainly an argument I'll need to address and come
25 to a conclusion on. What I have to do, of course, and since

1 I have the benefit of you nice people here today, I have to
2 ask questions that could -- I could potentially run into in
3 -- you know, a decision tree looks like a lot of different
4 things. So I try to ask all the questions, and then we'll
5 see where -- how I put the pieces together.

6 And so I understand you're not waiving that
7 argument, and I understand that that's your view. But if
8 for some reason I do end up having to make a -- some kind of
9 a decision on that issue, is there anything more that you
10 think Three Arrows Capital would want to say?

11 MR. MOHEBBI: Absolutely. I think we would want
12 to lay out in meticulous detail, in fact, beyond just the
13 reservation of rights, the instances that show why this
14 would relate back based on both the objection to our proof
15 of claim and what was mentioned in our proof of claim. For
16 example, in our proof of claim, we mentioned that the
17 assignment agreement should not relieve Genesis of
18 liability. And so the notion that they had no notice or no
19 idea that this claim could -- or a claim like this could be
20 presented, it's just not factually accurate.

21 The other point that I would make is that we've
22 all been operating with this assumption that we're talking
23 about a fraudulent conveyance claim. That's certainly one
24 of the potential claims we might assert based on this
25 discovery. It's not the only claim. And I keep coming back

1 to emphasize because of how strange the situation really
2 was. If you look at the circumstances -- and to be fair, I
3 think this was before counsel at Cleary got involved in the
4 case. What happened here was really shocking in some ways.
5 We're talking about, you know, in the wake of a liquidation
6 assigning hundreds of millions of dollars in claims --

7 THE COURT: Well, but that's the -- that's --
8 you're asking me to have the merits or demerits of the
9 underlying claim affect this thing, and that's not the --
10 that's putting the cart before the horse. So I have to get
11 through --

12 MR. MOHEBBI: Exactly.

13 THE COURT: -- these things first. And so -- and
14 I'm sure the Debtors will have a different view on that.
15 But we'll get there. So I guess my question -- I'm looking
16 at the -- let me get the reply in front of me, and I'm
17 trying to figure out -- because I am trying to do this
18 efficiently. And again, I'm not -- I'm sort of walking a
19 fine line here. I'm not suggesting the briefing I've gotten
20 is insufficient on the question of relation back.

21 What I was trying to suggest is it's not how the
22 discussion started. It started with the sort of traditional
23 parameters of Rule 2004 and then spread from there. And so
24 when I look at the papers, I do see lengthy discussions on
25 -- so in your reply on Page 5, 6, 7, I think all the way to

1 the end of it on Page 11. So there is a lot of -- a lot
2 that's packed in there. So I guess the question is what --
3 what's not there, and if so, what -- why wasn't it stuck in
4 a reply.

5 So again, I'm -- I don't want to look like I'm
6 arguing both sides of the issue about further briefing, but
7 I have learned from my own time as a lawyer that if a judge
8 says what about further briefing, the answer reflexively
9 usually is, yes, Judge, we'll get you additional briefing.
10 And sometimes --

11 MR. MOHEBBI: Yes.

12 THE COURT: -- judges can do damage to things in
13 that. So I'm not suggesting additional briefing is
14 necessary. I am, however, trying to make sure that there's
15 no procedural defect in the way things are teed up for me to
16 make a decision on any and all of the issues that have been
17 raised by the papers. So with that, I would ask -- with
18 that prelude, with -- for your views on the question of what
19 else would you discuss, and is there a need to -- for
20 further briefing.

21 MR. MOHEBBI: I'll be candidly honest. If you're
22 going to rule in favor of us, we don't need any additional
23 briefing. I was partly joking there, Your Honor, but the
24 reality is, you know, if we are going to delve into this
25 question of relation back in the sense that it's going to

1 result in a merits based determination, we would like the
2 opportunity, if Your Honor's inclined to rule against us, to
3 explain and to lay out this entire discussion in the normal
4 way that one would do in the context of an amendment.

5 THE COURT: Well --

6 MR. MOHEBBI: And that's just --

7 THE COURT: -- again, and now I look like I'm
8 going back on what I was discussing before, but there is --
9 if you take away the trappings and the bracketing of this in
10 Rule 2004, when you get to Page 5 and 6, it -- that does
11 look like it is, hey, a -- I mean, Roman Numeral II is that
12 these claims would be permitted as amendments to timely
13 filed claims, and then on the next Page 1 it says fraudulent
14 transfer of claim would relate back to the Three Arrows
15 claims. And then it goes through specific parts of the
16 claim.

17 So Paragraph 6, for example, and so -- and also
18 makes references to Paragraph 5, 7, 9 through 10. So I
19 guess what I'm asking is there something specific that you
20 would want to address that's not addressed here?

21 MR. MOHEBBI: I think additional cases that
22 address some of these -- some of the issues that Mr.
23 Barefoot and Mr. West have raised, I think we want to
24 reemphasize the extent to which this was raised in the --

25 THE COURT: Well --

1 MR. MOHEBBI: -- (indiscernible).

2 THE COURT: -- reemphasize...

3 MR. MOHEBBI: Well, sorry. Not reemphasize. I
4 should say emphasize and --

5 THE COURT: By -- again, we're talking about --

6 MR. MOHEBBI: -- contextualize --

7 THE COURT: -- unrelated and related and now
8 emphasizing and reemphasizing.

9 MR. MOHEBBI: Correct.

10 THE COURT: I got the emphasis in the first
11 instance. So that's what I'm trying to avoid is pleadings
12 that actually just cost people money and don't add anything
13 --

14 MR. MOHEBBI: Yeah.

15 THE COURT: -- but people feel duty bound to do
16 them because there's a suggestion the judge said, well,
17 there's -- we're not sure what we're briefing. And again,
18 I've been on the other side of this. We're not sure what
19 additional things we're briefing, but we're not going to let
20 the opportunity to go by. And so that's a cruel and unusual
21 thing to do to lawyers having been on the other side of
22 that. And so I'm trying to avoid that.

23 MR. MOHEBBI: No, I understand, Your Honor. And I
24 hope you understand kind of the box that I'm in here --

25 THE COURT: Mm-hmm.

1 MR. MOHEBBI: -- in the sense that --

2 THE COURT: I do.

3 MR. MOHEBBI: -- I want --

4 THE COURT: So here's what I'd like to do.

5 MR. MOHEBBI: -- to make sure --

6 THE COURT: I haven't heard anything in the
7 argument today that suggests that there's additional factual
8 development beyond the explanation of the claims and sort of
9 how you connect the dots. I -- so maybe one way to do this
10 is to say if people want to, in light of the discussion
11 today, submit, you know, up to three to five cases that if
12 you think there's additional cases that, given the way the
13 argument developed, that are worthwhile, I'm happy to take
14 that. And then that way, people can do something that's
15 productive.

16 At the same time, you don't feel like you've got a
17 pen in your hand metaphorically speaking but you don't
18 really know what it is you want me to brief. And I don't
19 want to do that and sort of send people out to -- again,
20 there are times when a motion to amend, they can look all
21 sorts of different ways, but they can sometimes be -- have a
22 particular parsing of very specific clauses.

23 I don't -- that doesn't appear to be the case
24 here. There -- you've cited to the aspects of the claim
25 where, in your view, that you've put people on notice of

1 what you have. And I have those, and so I think that that's
2 fine. So unless somebody has a better idea, what I'll do is
3 I'll give parties a chance to submit -- and you can just
4 submit the actual cases -- three to five cases on -- that
5 follow up on any of the points that we discussed here today
6 that you think would be particularly helpful.

7 So for example, if somebody happens to stumble
8 upon a wonderful dissertation on how you consider sort of
9 unrelated, for purposes of Rule 2004, versus related for
10 purposes of relation back, that would be wonderful. And if
11 you have any other cases, that would be fine. So let's
12 split the baby that way. And with that, anything else from
13 Three Arrows Capital here this morning?

14 MR. MOHEBBI: No. I guess just would want to
15 emphasize as a party note the -- you know, there was a lot
16 of discussion about, you know, DCG being on the Creditors
17 Committee and so forth. But I just want to emphasize that
18 this is all -- we're talking about a very short period of
19 time. I mean, the Debtors filed their claims, you know, I
20 guess early this year. We -- the claim objection deadline
21 was within five months of that.

22 The reality is it's not just about knowing the
23 circumstances of a claim like this, which could potentially
24 be explosive. And we're not in the business of making
25 explosive allegations against Hardees even as a --

1 THE COURT: Well, let's steer clear of things like
2 explosive when you're asking for information to --

3 MR. MOHEBBI: All right.

4 THE COURT: -- figure out whether you have a
5 claim. That seems --

6 MR. MOHEBBI: Well --

7 THE COURT: That seems --

8 MR. MOHEBBI: But that's exactly --

9 THE COURT: That seems to be not an appropriate
10 thing to throw out adjectives. Claims are claims. They are
11 what they are. If you don't know whether you have a claim,
12 then your request is judgment. We think it's appropriate
13 for us to get the information to figure out whether we have
14 a claim. I get it. So --

15 MR. MOHEBBI: I was just responding to Mr.
16 Barefoot's comment that, you know, we should've preserved --
17 we should've put in our amended proof of claim we may have a
18 claim that, you know, DCG defrauded us essentially, or with
19 which we did with Grayscale because there's -- there is an
20 actual lawsuit that has been filed by Grayscale
21 shareholders. So we had a basis to basically say, look, we
22 may have claims like this because we were similarly situated
23 holders of the Grayscale trust.

24 That was not the case with respect to this other
25 issue. So mere -- you know, we're talking about a five- to

1 seven-month period where we diligently -- our clients -- the
2 short liquidators diligently evaluated all of these things,
3 but that goes beyond just evaluating fact. It goes to
4 evaluating legal theories as well. And so we followed the
5 proper steps. And there's absolutely -- again, there's no
6 prejudice here at all to the Debtors. We're -- I mean, you
7 know, we're talking about a very short period of time for
8 documents.

9 There's probably been more effort expended in, you
10 know, the many people here on the call today than there
11 would be in actually searching and producing the documents.
12 So I just want to emphasize that because I do think that the
13 liquidators are in a very unique situation as a Debtor
14 themselves, representing the Debtor themselves, who don't
15 have any founders who have cooperated with them. They don't
16 have any (indiscernible) --

17 THE COURT: No. I do think we all understand that
18 you've had some significant challenges, and I don't know
19 that anybody disputes any of that. So my thought is I'll
20 get through this. If there's anything I need, I do reserve
21 the right if there's anything I feel like when I analyze
22 things if there's additional questions or information I
23 need, I'll ask. And you know, I can give people, you know
24 -- if you can get me those cases next week, say, you know, a
25 week from today, what three -- whatever you want to do. I

1 don't want to wreck anybody's life to get it done sooner.
2 So just submit it to me when you get a chance, but no later
3 than a week, and that would be fine.

4 MR. MOHEBBI: Thank you, Your Honor.

5 THE COURT: All right. Thank you very much.

6 MR. BAREFOOT: Just one point of clarification on
7 the additional submissions. I think (indiscernible), Your
8 Honor, that you just want any new cases, just the cases
9 themselves. No supplemental (indiscernible).

10 THE COURT: Exactly. Because I understand putting
11 you in that -- and that's, again, I think I was fairly
12 inartful in doing this, but I'm trying not to put you in a
13 box that's unproductive for everybody. Because if you're
14 doing additional briefing, you're doing it for me. And so I
15 don't know that I was crystal clear on the issue. But what
16 I'm saying is I just wanted to make sure that we're in the
17 right posture and I have everything I might need. Based on
18 the argument, I think I do.

19 And but given the way this has evolved, I can see
20 that there may be -- and the questions that I had, I can see
21 that might be helpful for folks to identify particular cases
22 on issues that didn't make their way into the briefing, and
23 that's fine. So all right. With that, let me ask, Mr.
24 Barefoot, do you have anything else to discuss here today?

25 MR. BAREFOOT: No, Your Honor. And the deadline

1 that you suggested of a week from today is fine for the
2 Debtors if it's acceptable to the Creditors.

3 THE COURT: All right. So that's a good segue to
4 Three Arrows Capital. Anything else from Three Arrows? And
5 does a week work for you?

6 MR. MOHEBBI: Nothing else, and yes, it does, Your
7 Honor.

8 THE COURT: All right. Thank you. And anything
9 else from the Committee?

10 MR. WEST: Nothing else, Your Honor. Thank you.

11 THE COURT: All right. So I'll leave you with one
12 parting thing. I do anticipate getting a decision, a
13 written a decision out today or latest Tuesday that approves
14 the settlement that's pending under Rule 9019 with FTX. I
15 think I had signaled as much on the bench, but I know it's
16 always helpful to know these things. And so obviously,
17 it'll get -- you'll get notification of it when it gets
18 filed, but I just wanted to give you the heads up.

19 And with that, thank you all for your arguments
20 and again for your willingness to engage in a back and forth
21 of my questions, which often hop around a lot, and ruin what
22 I'm sure are otherwise beautiful and perfect presentations
23 that flow so wonderfully. So I appreciate your patience and
24 good humor in letting me kind of jump around. It is helpful
25 for me, so thank you very much. And with that, all of you

1 have a great day.

2 MR. BAREFOOT: Thank you, Your Honor.

3 MR. MOHEBBI: Thank you, Your Honor.

4 MR. WEST: Thank you, Your Honor.

5 (Whereupon these proceedings were concluded at
6 11:28 AM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: October 11, 2023